

COUNTRYMAN & McDANIEL

MICHAEL S. McDANIEL [State Bar No. 66774]

Cargolaw@aol.com

BRUCE A. LINDSAY [State Bar No. 102794]

Bal@cargolaw.com

LAX Airport Center, Eleventh Floor

5933 West Century Boulevard

Los Angeles, California 90045

Telephone: (310) 342-6500

Facsimile: (310) 342-6505

Attorneys for defendant UPS SUPPLY CHAIN SOLUTIONS, INC.
f/k/a Emery Air Freight Corporation

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UPS SUPPLY CHAIN SOLUTIONS, INC. f/k/a EMERY AIR FREIGHT CORPORATION,)	CASE NO. C 07-04389 WHA
)	
Plaintiff,)	JOINT REPORT OF PARTIES' RULE
)	26 PLANNING MEETING
vs.)	[Fed. R. Civ. P. 26(f)
)	Civil L. R. 16-9]
TANGO TRANSPORT, INC.,)	
)	CASE MANAGEMENT CONFERENCE
Defendants.)	DATE: November 29, 2007
)	TIME: 11:00 a.m.
)	Courtroom: 9

Under Federal Rule of Civil Procedure 26(f), Local Rule 16-9, and this Court's Standing Order, plaintiff UPS Supply Chain Solutions, Inc. f/k/a Emery Air Freight Corporation ("UPS-SCS") and Tango Transport, Inc., ("Tango") respectfully submit the following joint scheduling conference report:

A. RULE 26(f) DISCOVERY PLAN

(1) Automatic Disclosures

The parties agreed that there should be no changes in the timing, form, or requirement of the initial disclosures, and each party shall make its initial disclosures within fourteen days of the meet and confer conference, i.e., on or before November 7,

1 2007.

2 **(2) Discovery Scope and Schedule**

3 UPS-SCS shall seek discovery, *inter alia*, as to the facts and
4 circumstances of the underlying transportation loss, the
5 relationship of the parties and their course of dealing,
6 defendant's defenses and contentions regarding the relationship of
7 the parties, limitations of liability, and of plaintiff's damages.

8 Tango shall seek discovery, *inter alia*, on the privity of UPS-
9 SCS to Tango under the subject Forwarder/Motor Carrier Agreement,
10 the concept of applicability of fire as a *force majeure* under the
11 applicable law, the cause of the alleged loss, and the alleged
12 damages, including any limitations of liability between UPS-SCS and
13 its customers.

14 **(3) Discovery Limits**

15 The parties have agreed that discovery will not be conducted
16 in phases or limited to or focused upon particular issues. The
17 parties have further agreed that no changes are necessary on the
18 discovery limitations set forth under the federal and local rules.

19 **(4) Other Orders**

20 At this time, the parties seek no other orders from the Court
21 under Rule 26(c) or under Rules 16(b) and (c).

22 **(5) Proposed Discovery Plan**

23 The parties propose the following be the order of the Court in
24 reference to discovery, assuming a trial date of August 25, 2008:

25	Written discovery cut-off:	March 31, 2008
26	Non-expert witness depo cut-off:	May 30, 2008
27	Expert deposition cut-off:	July 31, 2008
28	Non-expert discovery cut-off:	July 15, 2008

(6) Motion Schedule (assuming a trial date of August 25, 2008)

Dispositive Motion cut-off July 15, 2008

Discovery Motion cut-off July 15, 2008

ADR cut-off June 30, 2008

(7) Expert Disclosure

Per Federal Code of Civil Procedure, assuming trial date of August 25, 2008:

Concurrent Expert Disclosure May 27, 2008

Concurrent Rebuttal Disclosure June 26, 2008

(8) Trial Estimate

Three (3) days non-jury trial

(9) Trial and Pre-trial dates

Trial date requested August 25, 2008

Pre-trial date requested	Per court order
--------------------------	-----------------

B. STANDING ORDER FOR ALL JUDGES OF THE NORTHERN DISTRICT OF CALIFORNIA

(1) Jurisdiction and Service:

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. section 1332, since this suit is between citizens of different states, as UPS-SCS and Tango are corporations incorporated in different states, without principal places of business in the same state, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. Additionally, the cause of action of UPS-SCS is governed by the Carmack Amendment, 49 U.S.C. section 1441(a), which is preemptive of all state and common law remedies.

Service of suit has been effected. No known persons or entities are presently indispensable or necessary parties requiring

1 service of process. Discovery may reveal the need to substitute a
2 presently unidentified person or entity for a fictitiously named
3 defendant.

4 (2) Facts:

5 UPS-SCS brings this claim for breach of contract, negligence
6 and breach of bailment against Tango for damage and loss to the
7 cargo of customers of UPS-SCS which occurred on July 28, 2005, when
8 a truck being operated by an employee of Tango crashed and caught
9 fire near Phoenix, Arizona.

10 UPS-SCS alleges that Tango was carrying the cargo under a
11 Forwarder/Motor Carrier Agreement ("the Agreement"), initially
12 entered into between Tango and Emery Air Freight Corporation
13 ("Emery") on September 26, 2002, and amended on July 14, 2004 when
14 Emery changed its corporate name to Menlo Worldwide Forwarding, Inc
15 ("Menlo").

16 UPS-SCS alleges that thereafter it became the successor of
17 Emery and Menlo, through purchase by UPS-SCS.

18 The Agreement provides that Tango as the "Carrier" will carry
19 liability insurance coverage and indemnify Emery up to one million
20 dollars (\$1,000,000.00) for any amount paid by Emery to its
21 customer as compensation for loss or damage to property occurring
22 while moving under the Agreement. The Agreement also provides that
23 it applies to and binds the successors of the parties and may be
24 assigned at any time by a party to any parent company.

25 Following the loss, UPS-SCS provided timely notice of loss and
26 intent to present a claim to Tango. Tango paid claims of customers
27 of UPS-SCS in the approximate sum of \$98,000.00 and asserted that
28 its limitation of liability was in an amount of \$100,000.00 for any

1 one loss event.

2 UPS-SCS asserted that the Agreement bound Tango to pay the
3 claims of the customers of UPS-SCS up to one million dollars or to
4 indemnify UPS-SCS up to that amount in the event that UPS-SCS paid
5 said claims.

6 UPS-SCS paid cargo loss claims of its customers in the amount
7 of \$80,609.77 and Tango has refused to indemnify UPS-SCS therefor,
8 despite the contractual indemnification provision of the Agreement.

9 UPS-SCS contends that Tango is liable for the full amount of
10 the damage caused by the negligent operation of its truck by its
11 driver under contract, negligence and bailment law, as well as the
12 provisions of the Carmack Amendment.

13 Tango contends that it has a valid limitation of liability
14 provision which was in effect for the subject movement. Tango also
15 contends that UPS-SCS is a stranger to the Agreement and, hence,
16 lacks privity of contract with Tango. Tango contends that the fire
17 which occurred after its driver collided with a cement truck
18 constitutes a *force majeure* under the Agreement which suspends its
19 obligations under the Agreement. Finally, Tango contends portions
20 of the agreement may be void under applicable law.

21 **(3) Legal Issues:**

22 The key legal issues include the contractual relationship of
23 the parties, including the standing of UPS-SCS to maintain the
24 action, and the validity of and the existence of any
25 indemnification rights and obligations of Tango to UPS-SCS, as well
26 as whether any limitations of liability apply to the loss and the
27 nature and extent of the claimed damages of UPS-SCS.

28 ///

1 **(4) Motions:**

2 The parties anticipate that dispositive motions will be made
3 pursuant to Rule 56 regarding the rights and liabilities of
4 plaintiff and defendant.

5 **(5) Amendment to Pleadings**

6 No amendments to the pleadings are presently anticipated by
7 the parties with the possible exception of adding a person or
8 entity as a previously fictitiously named defendant.

9 **(6) Evidence Preservation**

10 Counsel for UPS-SCS has advised the client of the need to
11 preserve evidence relevant to the issues reasonably evident in this
12 action.

13 **(7) Disclosures**

14 The parties agree to make the initial disclosures within the
15 time guidelines of F.R.C.P. Rule 26.

16 **(8) Discovery**

17 No discovery has been taken to date. The parties will conduct
18 discovery within the limits of F.R.C.P. and as set forth above.

19 **(9) Class Actions**

20 Not applicable.

21 **(10) Related Cases**

22 There are no known related cases.

23 **(11) Relief**

24 UPS-SCS seeks money damages for claims paid by it to its
25 customers for cargo loss by way of a claim for indemnification.

26 **(12) Settlement and ADR**

27 The parties agree to participate in non-binding private
28 mediation before the ADR cut-off date established by the Court.

1 **(13) Consent to Magistrate Judge for All Purposes**

2 The parties do not consent to a Magistrate Judge for all
3 purposes.

4 **(14) Other References**

5 The case is not suitable for reference for other avenues of
6 resolution.

7 **(15) Narrowing of Issues**

8 The parties will confer in an effort to narrow the issues and
9 intend to bring dispositive motions to limit trial of the issues.

10 **(16) Expedited Schedule**

11 The case is not amenable to an expedited handling by the
12 Court.

13 **(17) Scheduling**

14 Proposed dates for designation of experts, discovery cut-off,
15 hearing of dispositive motions, pretrial conference and trial have
16 been set forth above.

17 **(18) Trial**

18 Trial will be to the Court and is estimated to take three
19 days.

20 **(19) Disclosure of Non-party Interested Entities or Persons**

21 The parties have disclosed all non-party interested entities
22 or persons.

23 **(20) Other**

24 The parties know of no other matters for consideration which
25 presently may facilitate the just, speedy and inexpensive
26 disposition of this matter.

27 ///
28 ///
29 ///
30 ///
31 ///
32 ///
33 ///
34 ///
35 ///
36 ///
37 ///
38 ///
39 ///
40 ///
41 ///
42 ///
43 ///
44 ///
45 ///
46 ///
47 ///
48 ///
49 ///
50 ///
51 ///
52 ///
53 ///
54 ///
55 ///
56 ///
57 ///
58 ///
59 ///
60 ///
61 ///
62 ///
63 ///
64 ///
65 ///
66 ///
67 ///
68 ///
69 ///
70 ///
71 ///
72 ///
73 ///
74 ///
75 ///
76 ///
77 ///
78 ///
79 ///
80 ///
81 ///
82 ///
83 ///
84 ///
85 ///
86 ///
87 ///
88 ///
89 ///
90 ///
91 ///
92 ///
93 ///
94 ///
95 ///
96 ///
97 ///
98 ///
99 ///
100 ///
101 ///
102 ///
103 ///
104 ///
105 ///
106 ///
107 ///
108 ///
109 ///
110 ///
111 ///
112 ///
113 ///
114 ///
115 ///
116 ///
117 ///
118 ///
119 ///
120 ///
121 ///
122 ///
123 ///
124 ///
125 ///
126 ///
127 ///
128 ///
129 ///
130 ///
131 ///
132 ///
133 ///
134 ///
135 ///
136 ///
137 ///
138 ///
139 ///
140 ///
141 ///
142 ///
143 ///
144 ///
145 ///
146 ///
147 ///
148 ///
149 ///
150 ///
151 ///
152 ///
153 ///
154 ///
155 ///
156 ///
157 ///
158 ///
159 ///
160 ///
161 ///
162 ///
163 ///
164 ///
165 ///
166 ///
167 ///
168 ///
169 ///
170 ///
171 ///
172 ///
173 ///
174 ///
175 ///
176 ///
177 ///
178 ///
179 ///
180 ///
181 ///
182 ///
183 ///
184 ///
185 ///
186 ///
187 ///
188 ///
189 ///
190 ///
191 ///
192 ///
193 ///
194 ///
195 ///
196 ///
197 ///
198 ///
199 ///
200 ///
201 ///
202 ///
203 ///
204 ///
205 ///
206 ///
207 ///
208 ///
209 ///
210 ///
211 ///
212 ///
213 ///
214 ///
215 ///
216 ///
217 ///
218 ///
219 ///
220 ///
221 ///
222 ///
223 ///
224 ///
225 ///
226 ///
227 ///
228 ///
229 ///
230 ///
231 ///
232 ///
233 ///
234 ///
235 ///
236 ///
237 ///
238 ///
239 ///
240 ///
241 ///
242 ///
243 ///
244 ///
245 ///
246 ///
247 ///
248 ///
249 ///
250 ///
251 ///
252 ///
253 ///
254 ///
255 ///
256 ///
257 ///
258 ///
259 ///
260 ///
261 ///
262 ///
263 ///
264 ///
265 ///
266 ///
267 ///
268 ///
269 ///
270 ///
271 ///
272 ///
273 ///
274 ///
275 ///
276 ///
277 ///
278 ///
279 ///
280 ///
281 ///
282 ///
283 ///
284 ///
285 ///
286 ///
287 ///
288 ///
289 ///
290 ///
291 ///
292 ///
293 ///
294 ///
295 ///
296 ///
297 ///
298 ///
299 ///
300 ///
301 ///
302 ///
303 ///
304 ///
305 ///
306 ///
307 ///
308 ///
309 ///
310 ///
311 ///
312 ///
313 ///
314 ///
315 ///
316 ///
317 ///
318 ///
319 ///
320 ///
321 ///
322 ///
323 ///
324 ///
325 ///
326 ///
327 ///
328 ///
329 ///
330 ///
331 ///
332 ///
333 ///
334 ///
335 ///
336 ///
337 ///
338 ///
339 ///
340 ///
341 ///
342 ///
343 ///
344 ///
345 ///
346 ///
347 ///
348 ///
349 ///
350 ///
351 ///
352 ///
353 ///
354 ///
355 ///
356 ///
357 ///
358 ///
359 ///
360 ///
361 ///
362 ///
363 ///
364 ///
365 ///
366 ///
367 ///
368 ///
369 ///
370 ///
371 ///
372 ///
373 ///
374 ///
375 ///
376 ///
377 ///
378 ///
379 ///
380 ///
381 ///
382 ///
383 ///
384 ///
385 ///
386 ///
387 ///
388 ///
389 ///
390 ///
391 ///
392 ///
393 ///
394 ///
395 ///
396 ///
397 ///
398 ///
399 ///
400 ///
401 ///
402 ///
403 ///
404 ///
405 ///
406 ///
407 ///
408 ///
409 ///
410 ///
411 ///
412 ///
413 ///
414 ///
415 ///
416 ///
417 ///
418 ///
419 ///
420 ///
421 ///
422 ///
423 ///
424 ///
425 ///
426 ///
427 ///
428 ///
429 ///
430 ///
431 ///
432 ///
433 ///
434 ///
435 ///
436 ///
437 ///
438 ///
439 ///
440 ///
441 ///
442 ///
443 ///
444 ///
445 ///
446 ///
447 ///
448 ///
449 ///
450 ///
451 ///
452 ///
453 ///
454 ///
455 ///
456 ///
457 ///
458 ///
459 ///
460 ///
461 ///
462 ///
463 ///
464 ///
465 ///
466 ///
467 ///
468 ///
469 ///
470 ///
471 ///
472 ///
473 ///
474 ///
475 ///
476 ///
477 ///
478 ///
479 ///
480 ///
481 ///
482 ///
483 ///
484 ///
485 ///
486 ///
487 ///
488 ///
489 ///
490 ///
491 ///
492 ///
493 ///
494 ///
495 ///
496 ///
497 ///
498 ///
499 ///
500 ///
501 ///
502 ///
503 ///
504 ///
505 ///
506 ///
507 ///
508 ///
509 ///
510 ///
511 ///
512 ///
513 ///
514 ///
515 ///
516 ///
517 ///
518 ///
519 ///
520 ///
521 ///
522 ///
523 ///
524 ///
525 ///
526 ///
527 ///
528 ///
529 ///
530 ///
531 ///
532 ///
533 ///
534 ///
535 ///
536 ///
537 ///
538 ///
539 ///
540 ///
541 ///
542 ///
543 ///
544 ///
545 ///
546 ///
547 ///
548 ///
549 ///
550 ///
551 ///
552 ///
553 ///
554 ///
555 ///
556 ///
557 ///
558 ///
559 ///
560 ///
561 ///
562 ///
563 ///
564 ///
565 ///
566 ///
567 ///
568 ///
569 ///
570 ///
571 ///
572 ///
573 ///
574 ///
575 ///
576 ///
577 ///
578 ///
579 ///
580 ///
581 ///
582 ///
583 ///
584 ///
585 ///
586 ///
587 ///
588 ///
589 ///
590 ///
591 ///
592 ///
593 ///
594 ///
595 ///
596 ///
597 ///
598 ///
599 ///
600 ///
601 ///
602 ///
603 ///
604 ///
605 ///
606 ///
607 ///
608 ///
609 ///
610 ///
611 ///
612 ///
613 ///
614 ///
615 ///
616 ///
617 ///
618 ///
619 ///
620 ///
621 ///
622 ///
623 ///
624 ///
625 ///
626 ///
627 ///
628 ///
629 ///
630 ///
631 ///
632 ///
633 ///
634 ///
635 ///
636 ///
637 ///
638 ///
639 ///
640 ///
641 ///
642 ///
643 ///
644 ///
645 ///
646 ///
647 ///
648 ///
649 ///
650 ///
651 ///
652 ///
653 ///
654 ///
655 ///
656 ///
657 ///
658 ///
659 ///
660 ///
661 ///
662 ///
663 ///
664 ///
665 ///
666 ///
667 ///
668 ///
669 ///
670 ///
671 ///
672 ///
673 ///
674 ///
675 ///
676 ///
677 ///
678 ///
679 ///
680 ///
681 ///
682 ///
683 ///
684 ///
685 ///
686 ///
687 ///
688 ///
689 ///
690 ///
691 ///
692 ///
693 ///
694 ///
695 ///
696 ///
697 ///
698 ///
699 ///
700 ///
701 ///
702 ///
703 ///
704 ///
705 ///
706 ///
707 ///
708 ///
709 ///
710 ///
711 ///
712 ///
713 ///
714 ///
715 ///
716 ///
717 ///
718 ///
719 ///
720 ///
721 ///
722 ///
723 ///
724 ///
725 ///
726 ///
727 ///
728 ///
729 ///
730 ///
731 ///
732 ///
733 ///
734 ///
735 ///
736 ///
737 ///
738 ///
739 ///
740 ///
741 ///
742 ///
743 ///
744 ///
745 ///
746 ///
747 ///
748 ///
749 ///
750 ///
751 ///
752 ///
753 ///
754 ///
755 ///
756 ///
757 ///
758 ///
759 ///
760 ///
761 ///
762 ///
763 ///
764 ///
765 ///
766 ///
767 ///
768 ///
769 ///
770 ///
771 ///
772 ///
773 ///
774 ///
775 ///
776 ///
777 ///
778 ///
779 ///
780 ///
781 ///
782 ///
783 ///
784 ///
785 ///
786 ///
787 ///
788 ///
789 ///
790 ///
791 ///
792 ///
793 ///
794 ///
795 ///
796 ///
797 ///
798 ///
799 ///
800 ///
801 ///
802 ///
803 ///
804 ///
805 ///
806 ///
807 ///
808 ///
809 ///
810 ///
811 ///
812 ///
813 ///
814 ///
815 ///
816 ///
817 ///
818 ///
819 ///
820 ///
821 ///
822 ///
823 ///
824 ///
825 ///
826 ///
827 ///
828 ///
829 ///
830 ///
831 ///
832 ///
833 ///
834 ///
835 ///
836 ///
837 ///
838 ///
839 ///
840 ///
841 ///
842 ///
843 ///
844 ///
845 ///
846 ///
847 ///
848 ///
849 ///
850 ///
851 ///
852 ///
853 ///
854 ///
855 ///
856 ///
857 ///
858 ///
859 ///
860 ///
861 ///
862 ///
863 ///
864 ///
865 ///
866 ///
867 ///
868 ///
869 ///
870 ///
871 ///
872 ///
873 ///
874 ///
875 ///
876 ///
877 ///
878 ///
879 ///
880 ///
881 ///
882 ///
883 ///
884 ///
885 ///
886 ///
887 ///
888 ///
889 ///
890 ///
891 ///
892 ///
893 ///
894 ///
895 ///
896 ///
897 ///
898 ///
899 ///
900 ///
901 ///
902 ///
903 ///
904 ///
905 ///
906 ///
907 ///
908 ///
909 ///
910 ///
911 ///
912 ///
913 ///
914 ///
915 ///
916 ///
917 ///
918 ///
919 ///
920 ///
921 ///
922 ///
923 ///
924 ///
925 ///
926 ///
927 ///
928 ///
929 ///
930 ///
931 ///
932 ///
933 ///
934 ///
935 ///
936 ///
937 ///
938 ///
939 ///
940 ///
941 ///
942 ///
943 ///
944 ///
945 ///
946 ///
947 ///
948 ///
949 ///
950 ///
951 ///
952 ///
953 ///
954 ///
955 ///
956 ///
957 ///
958 ///
959 ///
960 ///
961 ///
962 ///
963 ///
964 ///
965 ///
966 ///
967 ///
968 ///
969 ///
970 ///
971 ///
972 ///
973 ///
974 ///
975 ///
976 ///
977 ///
978 ///
979 ///
980 ///
981 ///
982 ///
983 ///
984 ///
985 ///
986 ///
987 ///
988 ///
989 ///
990 ///
991 ///
992 ///
993 ///
994 ///
995 ///
996 ///
997 ///
998 ///
999 ///
1000 ///
1001 ///
1002 ///
1003 ///
1004 ///
1005 ///
1006 ///
1007 ///
1008 ///
1009 ///
1010 ///
1011 ///
1012 ///
1013 ///
1014 ///
1015 ///
1016 ///
1017 ///
1018 ///
1019 ///
1020 ///
1021 ///
1022 ///
1023 ///
1024 ///
1025 ///
1026 ///
1027 ///
1028 ///
1029 ///
1030 ///
1031 ///
1032 ///
1033 ///
1034 ///
1035 ///
1036 ///
1037 ///
1038 ///
1039 ///
1040 ///
1041 ///
1042 ///
1043 ///
1044 ///
1045 ///
1046 ///
1047 ///
1048 ///
1049 ///
1050 ///
1051 ///
1052 ///
1053 ///
1054 ///
1055 ///
1056 ///
1057 ///
1058 ///
1059 ///
1060 ///
1061 ///
1062 ///
1063 ///
1064 ///
1065 ///
1066 ///
1067 ///
1068 ///
1069 ///
1070 ///
1071 ///
1072 ///
1073 ///
1074 ///
1075 ///
1076 ///
1077 ///
1078 ///
1079 ///
1080 ///
1081 ///
1082 ///
1083 ///
1084 ///
1085 ///
1086 ///
1087 ///
1088 ///
1089 ///
1090 ///
1091 ///
1092 ///
1093 ///
1094 ///
1095 ///
1096 ///
1097 ///
1098 ///
1099 ///
1100 ///
1101 ///
1102 ///
1103 ///
1104 ///
1105 ///
1106 ///
1107 ///
1108 ///
1109 ///
1110 ///
1111 ///
1112 ///
1113 ///
1114 ///
1115 ///
1116 ///
1117 ///
1118 ///
1119 ///
1120 ///
1121 ///
1122 ///
1123 ///
1124 ///
1125 ///
1126 ///
1127 ///
1128 ///
1129 ///
1130 ///
1131 ///
1132 ///
1133 ///
1134 ///
1135 ///
1136 ///
1137 ///
1138 ///
1139 ///
1140 ///
1141 ///
1142 ///
1143 ///
1144 ///
1145 ///
1146 ///
1147 ///
1148 ///
1149 ///
1150 ///
1151 ///
1152 ///
1153 ///
1154 ///
1155 ///
115

1 Dated: November 20, 2007

COUNTRYMAN & MCDANIEL
MICHAEL S. MCDANIEL
BRUCE A. LINDSAY

2
3
4 By: BRUCE A. LINDSAY
Attorneys for plaintiff UPS-SCS f/k/a
EMERY AIR FREIGHT CORPORATION

5
6
7 Dated: November 20, 2007

ROBERTS, CUNNINGHAM & STRIPLING, LLP
H. N. CUNNINGHAM, III
JAMES C. BAKER

8
9 By: H. N. CUNNINGHAM, III
Attorneys for defendant Tango
Transport